

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

Case No. 07-cr-130-01-SM

Corey Donovan

ORDER

Re: Document No. 97, Motion for Relief from Judgment

Ruling: Denied. Although cast as a motion for relief from judgment, the motion challenges the legality of defendant's underlying sentence, and, as such, it is properly construed as a motion for relief under the provisions of 28 U.S.C. § 2255. Trenkler v. United States, 536 F.3d 85, 97 (1st Cir. 2008) quoting Melton v. United States, 359 F.3d 855, 857 (7th Cir. 2004) ("Any motion filed in the district court that imposed the sentence, and substantively within the scope of § 2255 . . . is a motion under § 2255, no matter what title the prisoner plasters on the cover."); see also Rodwell v. Pepe, 324 F.3d 66, 70 (1st Cir. 2003). By order dated June 24, 2009, petitioner was advised of the provisions of section 2255, yet he waited until May 25, 2010, to sign (and presumably deliver to prison officials for mailing) his motion for relief. A motion for relief under section 2255, however, must be filed within one year after the conviction becomes final (28 U.S.C. § 2255(1)). The conviction in this case became final on March 24, 2009. Accordingly, the petition is untimely and must be dismissed.


Steven J. McAuliffe
Chief Judge

Date: June 22, 2010

cc: Corey Donovan
Terry Ollila, AUSA
Liam Scully, Esq.
US Probation
US Marshal